

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KENNETH J. CHRISTOPHER,

Plaintiff,

v.

Case No. 12-11872

OWNIT MORTGAGE SOLUTIONS,
INC., et al.,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO STRIKE AND DIRECTING
PLAINTIFF TO COMPENSATE DEFENDANTS**

Defendants Mortgage Electronic Registration Systems, Inc. and U.S. Bank, N.A. have filed a motion seeking to strike count I (§§ 31-34) and ¶ 11 of Plaintiff's first amended complaint pursuant to Federal Rule of Civil Procedure 12(f)(2). On March 13, 2012, Plaintiff filed a complaint to quiet title with Macomb County Circuit Court, and Defendants timely removed. Plaintiff then filed a purported amended complaint on August 17, 2012, without seeking leave or consent. On August 23, 2012, the court struck the amended complaint for Plaintiff's failure to adhere to Federal Rule of Civil Procedure 15(a). On August 24, 2012, Plaintiff moved to amend the complaint, and on October 31, 2012, the court granted the motion in part. The court denied the motion to amend with respect to "any allegations regarding whether Defendants violated Mich. Comp. Laws § 600.3205." (Order at 8, Dkt. # 23.)

In spite of the court's order allowing limited amendment, Plaintiff filed an amended complaint with allegations pertaining to the alleged violation of Mich. Comp. Laws § 600.3205. (Am. Compl. ¶¶ 11, 31-34, Dkt. #24.)

Plaintiff has not responded to Defendants' motion to strike and, when court staff inquired about the late response, Plaintiff informed the staff that there would be no opposition to the motion. Defendants also aver that they contacted Plaintiff in an attempt to allow Plaintiff to voluntarily withdraw these allegations but that Plaintiff failed to respond. The court concludes that consent was unreasonably withheld. Plaintiff must therefore reimburse Defendants' costs for the expense unnecessarily incurred in presenting their motion. See E.D. Mich. LR 7.1(a)(3) ("The court may tax costs for unreasonable withholding of consent."). Accordingly,

IT IS ORDERED that Defendants' motion to strike pursuant to Rule 12(f)(2) [Dkt. # 25] is GRANTED. Count I (¶¶ 31-34) and ¶ 11 of Plaintiff's first amended complaint [Dkt. # 24] are STRICKEN.

IT IS FURTHER ORDERED that Defendants by **January 23, 2013**, shall submit to Plaintiff's counsel a Bill of Costs detailing the reasonable fees and expenses incurred in preparing and presenting the instant motion, and Plaintiff, **NOT LATER THAN February 6, 2013, SHALL PAY** such reasonable fees and expenses in full, or by the same deadline file an objection on the docket with a detailed explanation in opposition to the reasonableness of such fees and expenses. In such event, Defendants shall

forthwith reply, and the court shall decide the accounting on the papers presented.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 15, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 15, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522